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Deposited in DRO:

19 January 2020

Version of attached file:

Accepted Version

Peer-review status of attached file:

Peer-reviewed

Citation for published item:

James, Simon P. (2020) 'Legal rights and nature's contributions to people : is there a connection?', *Biological conservation.*, 241 . p. 108325.

Further information on publisher's website:

<https://doi.org/10.1016/j.biocon.2019.108325>

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1 Legal rights and nature's contributions to people: is there a connection?

2
3 It has been claimed that approaches to conservation framed in terms of nature's
4 contributions to people are congenial to ones framed in terms of rights. This paper
5 provides what has so far been lacking – namely, an argument in support of this claim.
6 The argument takes its cue from the observation that nature's contributions to people
7 can take the form of contributions to cultural identity. It is then argued that in some
8 such cases one can justify conserving the relevant natural entities by appealing to the
9 relevant people's legal right to their own cultural identity. In such instances, it is
10 proposed, appeals to nature's contributions to people really are consonant with
11 appeals to legal rights. The argument is developed by means of a discussion of the
12 cultural value of reindeer herding in Saami communities in northern Europe.

14 1. Introduction

15
16 The concept of *nature's contributions to people* (NCP) has attracted a great deal of attention
17 in recent years. Not everyone believes it provides a helpful way of framing conservation
18 issues (see, for example, Braat 2018). But for its champions in the IPBES and elsewhere, it
19 offers an attractively inclusive and culturally-sensitive way of speaking, writing and thinking
20 about 'all the contributions, both positive and negative, of living nature (diversity of
21 organisms, ecosystems, and their associated ecological and evolutionary processes) to
22 people's quality of life' (Díaz et al. 2018: 270).

23 Sandra Díaz et al. (2018) give several reasons to adopt what they call the NCP
24 approach (2018: 270). Amongst other things, they claim, it 'facilitates much more than
25 previous framings the connection with rights-based approaches to conservation...' (Díaz et
26 al. 2018: 272)¹ If it were true, that claim would have significant implications, for it would
27 indicate that two prominent approaches to nature conservation are, appearances
28 notwithstanding, in harmony with one another. But *is* it true? Some commentators remain
29 unconvinced. Leon C. Braat (2018) contends that Díaz and her co-authors 'give no evidence
30 from any peer-reviewed publication or policy document' for their claim. Jasper O. Kenter
31 (2018: 41) is also unpersuaded. In his view, it is 'not evident how contributions could
32 encompass rights'.

33 This paper argues that the NCP approach really is amenable to rights-based
34 approaches to conservation. Nature's contributions to people can, it is suggested, take the
35 form of contributions to cultural identity. In such instances, people derive part of their
36 cultural identity from the natural (or partly natural) entities with which they have meaningful
37 relationships. In such cases, the relevant relationships are likely to have what followers of the
38 NCP approach call high relational value; and in some of these cases, it is argued, one can
39 justify protecting the relevant natural entities by appealing to the relevant people's legal right
40 to their own cultural identity.

41 This argument is developed by means of an appeal to a concept that has come to
42 play a prominent role in the NCP approach – namely, that of *relational value* (see Díaz et al.
43 2015: 11). So we will begin by clarifying the meaning of that concept.

45 2. Relational value

¹ Díaz et al. do not explain what they mean by 'rights-based approaches to conservation'. I will take that phrase to denote, not just approaches to conservation that respect, protect or fulfill the moral or legal rights of interested parties (on which, see Campese 2009), but also attempts to conserve nature by appealing to those rights.

46
47 A distinction is often drawn between two approaches to nature conservation.² Advocates of
48 the first characteristically appeal to natural entities' *instrumental value* as means to the end of
49 human well-being. Advocates of the second characteristically argue that such entities should
50 be protected because they have a value – often called *intrinsic value* – that does not derive
51 from the contributions they make, or could make, to human well-being.

52 To appeal to relational value is to adopt a different approach (Chan et al. 2016). It is
53 to begin by considering the value, not of certain natural entities, but of certain *relationships*
54 between people and such entities.

55 These relationships are of a specific sort. First, just as NCPs can be either beneficial
56 or detrimental to people, so the relevant relationships can be either positive or negative (see,
57 e.g., Díaz et al. 2018: 270 and Knippenberg et al. 2018: 41). If positive, they ground
58 relational values; if negative, they presumably ground relational disvalues. (This paper will
59 focus on the former.) Second, the relevant sorts of relationships are not merely causal, but
60 *meaningful* (Pascual et al. 2017: 15) To clarify that distinction, suppose that Marianne lives
61 on the edge of a wood. For her, the wood is saturated with meaning. It is where she played as
62 a girl; it is where she used to stroll on Sunday afternoons with the man who is now her
63 husband; it is where the two of them now take their daughter Catherine to hunt for pine cones
64 and other treasures. She enjoys a meaningful relationship with the place. But now suppose
65 that, unbeknownst to them, Marianne and her family receive fresh water from a spring in the
66 mountains high above their home. Though Marianne is causally related to the spring, she
67 need not have a meaningful relationship with it. In fact, she might be unaware that it even
68 exists.

69 What exactly is supposed to have relational value in this and other such cases? The
70 people? The entities? The relationship between them? Some combination of those three? The
71 seminal papers on relational value, such as Díaz et al. 2015 and Chan et al. 2016, left this
72 question open. In a recent contribution to the literature on this topic, however, Luuk
73 Knippenberg et al. (2018) provide a more detailed account.

74 Knippenberg et al. rightly point out that some human-nature relationships are
75 *themselves* of value (ibid.: 41). This is so, they suggest, 'in a myriad of instances running in
76 scale from the interactions between a child and a dog, a farmer and her land, a community
77 and its forest, a government agency designing a plan for landscape renewal, humanity
78 struggling to keep the Earth whole.' (ibid.: 41)

79 In these sorts of cases, they claim, the relevant 'relationship can be seen to have
80 *constitutive* value, meaning that it is an integral part of a greater valuable whole'
81 (Knippenberg et al. 2018: 41). A 'flourishing human life' provides, they propose, an example
82 of such a whole (ibid.: 41). But there are others. Kai M. A. Chan et al. (2016: 1462) suggest
83 that the concept of relational value can help us to make sense of cases when nature
84 contributes to a people's sense of their own 'cultural identity' (see also, Pascual et al. 2017:
85 11).

86 It is plausible that in at least some such cases one is dealing with an NCP – more
87 precisely, an instance where people derive some sort of *benefit* from nature. After all, to

² In the following, I take the terms 'nature' and 'the natural world' to denote the kinds of entities (processes and events included) that environmentalists characteristically seek to protect. So, setting aside any tricky cases, old-growth woodlands, grizzly bears and the annual salmon run are 'in', while shopping malls, supermarket trolleys and the New Year Sales are 'out'. Below, I discuss the semi-wild reindeer that are of cultural value to the Saami people of Northern Europe. I take it that these animals qualify as natural in this broad sense of 'natural'.

contribute to a person's sense of their own cultural identity is in many cases to benefit that person. Conversely, people can be harmed when their sense of cultural identity is destabilised (see further, Kymlicka 1989: 175-7; Taylor 1994). It is plausible to suppose, then, that some meaningful human-nature relationships can have constitutive value on account of the contributions they make to a person's – or, perhaps, a people's – sense of their own cultural identity.

3. Saami reindeer herding

The meaning of that abstract claim may be clarified by appealing to a particular example. So, to this end, let us consider the meaningful relationship that obtains between reindeer and the Saami people of northern Europe.

The Saami are a diverse people, and not all of them have traditionally lived and worked with reindeer (see further, Scheinin 2008: 166). Furthermore, in those Saami communities that *are* traditionally based on reindeer herding, reindeer are not as important as they once were. Nowadays only about ten-percent of Saami continue to herd the animals, and they rarely adopt the old practice of following the reindeer migration. Instead, they tend to work on specific parts of the reindeers' grazing territories at specific times of year – and on snowmobiles and all-terrain vehicles rather than on foot or wooden skis.

Be that as it may, reindeer still have much value for the Saami. They continue to provide them with meat and (though less often) milk, the means of transportation and the raw materials for the traditional (or traditional-looking) items, such as antler-handled knives and fur-lined boots, that are so popular with tourists. In particular, reindeer continue to have a great deal of *cultural* value for the Saami. Indeed, as one commentator notes, the practice of reindeer-herding 'remains at the heart of their culture and is central to their celebrations and traditions' (Crowder 2015). It is central to Saami languages, for instance. The language of Northern Saami, for its part, has well over 1000 terms for classifying reindeer according to sex, age, appearance, ownership and character. Their specificity is remarkable. An *alesgahcin* is a small backward-pointing tine on a reindeer antler at the point where the antler bends forward. A *sarat* is a smallish male reindeer that chases a female reindeer out of the herd in order to mate with it (Magga 2006: 29, 31). References to reindeer are essential to the language and to the associated form of life. In Northern Saami, for instance, 'herd' is *eallu*; 'life', *eallin* (Benko 2011).

Reindeer are also closely linked with the Saami's sense of who, as a people, they are. As the anthropologist Robert Paine observes, many Saami continue to see themselves as reindeer herders; reindeer remain a key component of their 'sense of self' (Paine 1994: 199-200, 113). As one Saami elder put it: 'I have never had any other livelihood than reindeer management. For the whole of my life I have belonged to my District. I feel that the whole of my identity is bound up with my reindeer district...' (quoted in Paine 1994: 191).

4. The relational values of reindeer

This paper's aim is not to give a detailed and nuanced account of Saami reindeer herding; it is to make an abstract point about the connections between two approaches to nature conservation – one based on nature's contributions to people, another on rights. Accordingly, we will here make certain assumptions which would not be made in a detailed and nuanced anthropological study of Saami reindeer herding. In particular, we will refer to *the* cultural identity of the Saami reindeer herders, as if – contrary to the facts – that group were culturally homogenous (see further, Paine 1994: 199-200, 113).

137 That proviso noted, let us view the herders' relationship with their reindeer through
138 the lens of the concept of relational value.

139 The relevant meaningful relationship is that between reindeer and their Saami herders;
140 and that relationship has value for the herders because it contributes to their sense of their
141 own cultural identity. It does not do so merely as a *means* to that end. For the claim that the
142 Saami-reindeer relationship is merely a means to the end of preserving the herders' sense of
143 their own cultural identity implies that that end could be brought about, if only in principle,
144 by some *other* means. It implies, in other words, that the Saami-reindeer relationship is
145 substitutable (see further, O'Neill 2007: 5-8). That, however, does not seem to be the case. It
146 is reindeer herding, not sheep farming, say, or cattle ranching, that is important to the Saami
147 reindeer herders - not just to their sense of who, as a people, they are, but to their sense of
148 who, as individuals, they are in the light of that cultural identity. It is *that* practice that is a
149 key component of their sense of who they are. In this case, there appear to be no alternative
150 service providers. Indeed, instrumentalist talk of means and ends and the provision of cultural
151 or other sorts of ecosystem services seems, in this context, to be inappropriate (see further,
152 James 2015; Himes and Muraca 2018: 5).

153 References to constitution seem more apt. It seems more appropriate to say that the
154 practice of reindeer herding is *part of* or *constitutive of* the relevant whole – namely, the
155 herders' sense of their own cultural identity (see further, James, in press). In fact, some
156 suggest that the culture of the Saami reindeer herders is 'essentially based on reindeer
157 husbandry' (quoted at Eisenberg 2009: 129). However, whether or not that bold statement is
158 true, it is clear that the practice of reindeer herding is very important to the herders' sense of
159 their own cultural identity; indeed that the herders would lose some sense of who they are,
160 were their relationship with reindeer to be lost or transformed beyond recognition.

161 5. Rights 162

163
164 As we saw, Kenter (2018: 41) claims that 'It is not evident how contributions could
165 encompass rights.' After all, he adds, '[i]t is clear that they [i.e., NCPs] are end-seeking,
166 while rights are ends in themselves.' He is partly right. To claim that reindeer make some sort
167 of contribution to the Saami reindeer herders' sense of their own cultural identity is not
168 *equivalent* to claiming that the animals have any moral or legal rights. Nonetheless, appeals
169 to NCPs can, in some cases, be consonant with appeals to rights.

170 To see why, one must consider the concept of a right to cultural identity. It is true that
171 not all political philosophers and political theorists agree that any such right exists (see, for
172 instance, Waldron 1995). It is also true that a right to cultural identity functions at the level of
173 what is called 'soft' law, which, amongst other things, is to say that it is not enshrined in any
174 legally-binding instruments such as treaties. Even so, the concept of such a right plays an
175 important role in several instruments that are of legal significance but not strictly binding. For
176 example, the 2010 interim report of the International Law Association's Committee on the
177 Rights of Indigenous Peoples refers to the rights of such peoples 'to recognition and
178 preservation of their cultural identity' as a rule of customary law (ILA 2010: 51). Similarly,
179 the United Nations affirms the 'the right of everyone, individually or in association with
180 others or within a community or group... [t]o freely choose their own cultural identity',
181 where this is taken to include 'the right of all persons to express their cultural identity freely
182 and to exercise their cultural practices and way of life.' (CESCR 2009: para. 49) The
183 existence of a right to cultural identity is also implied by Article 8 of the United Nations
184 Declaration on the Rights of Indigenous Peoples, which states that 'Indigenous peoples and
185 individuals have the right not to be subjected to forced assimilation or destruction of their
186 culture' and that nation states should therefore 'provide effective mechanisms for prevention

of, and redress for... [a]ny action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities' (UN General Assembly 2007).

Much more could be said about the concept of a right to cultural identity and its role in international law (see further, Piergigli 2013: esp. 598-602). For example, much more could be said about whether such rights are possessed by individuals or by groups (see further, Kymlicka 1989: Chapter 10). For present purposes, though, it is enough to note that the concept of a right to cultural identity does some useful work in international law (numerous examples are provided in Piergigli 2013 and Ferri 2018).

Return to the case of the Saami. We have seen that the practice of reindeer herding plays an important role in their *sense* of their own cultural identity. It is reasonable to suppose that it also plays an important role in their cultural identity. Now suppose that the Saami have a legal right to their cultural identity. This would mean that the practice of reindeer herding would gain some measure of protection under the auspices of that right.³ It would also mean that the Saami's reindeer would gain some protection. Not necessarily the individual reindeer – the practice of reindeer herding typically involves the castration, branding and slaughter of individual animals. But the Saami's right to their own cultural identity would provide some measure of protection for the *kind* of which those individuals are members. One reason reindeer ought legally to be protected, the argument would go, is because the practice of reindeer herding is such an important part of Saami cultural identity.⁴

6. General conclusions

The preceding discussion of Saami reindeer herding implies the following general proposal. Take some entity, X. X may be a kind of organism conservationists wish to conserve, or it may not. It may not be an organism at all. It may, for instance, be a river or a particular ecosystem. My argument implies that for some entity, X, and some culturally-distinct people, Y, X may gain some protection under the auspices of the people of Y's legal right to their own cultural identity, if the following three criteria are met:

1. The people of Y have a meaningful relationship with X.
2. Were that relationship to disappear, the cultural identity of those people would be destabilised.
3. The people of Y have a legal right to their cultural identity.

Criterion 1 describes one kind of NCP – that is to say, one way that nature can benefit people. Criterion 2 refers to a state in which the meaningful relationship that obtains between certain people and certain natural entities has value as part of those people's cultural identity. As we saw, that sort of value cannot be adequately conceived of in terms of instrumentalist, service-focused conceptual schemes. However, as we also saw, it can be adequately conceived of in terms of a concept that is central to the NCP approach – namely, that of relational value. In cases where the three criteria spelt out above are met, then, natural entities may gain some

³ On the use of legal instruments such as Article 27 of the International Covenant on Civil and Political Rights and the forthcoming (though as yet unratified) Nordic Saami Convention in debates concerning the cultural rights of the Saami, see Bankes and Koivurova 2013, Scheinin 2008 and Donders 2002: Chapter XI.

⁴ It is a further question whether this means that the reindeer ought, all things considered, to be protected. Maybe, for instance, protecting them would violate the rights of some other cultural group. I set this complication aside here.

protection under the auspices of a people's legal right to their own cultural identity precisely because the relevant nature-people relationship has a sort of value that is both central to the NCP approach and (arguably) at odds with appeals to ecosystem services. To this extent, Díaz et al's claim is borne out. In this sort of case, the NCP approach really is congenial to rights-based approaches to conservation.

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